

Existing Tools to Address MTC Concerns Relating to Certain Income Tax Abuses/Inequities

- 1) Roughly 50% of the states have authority to require combined reports for unitary groups. Depending on the state, this authority may allow for inclusion of an insurance company in a combined report with its non-insurance company affiliates.
- 2) Section 2.B of MTC's Combined Report Model (approved on August 17, 2006) allows for the inclusion of insurance companies in a combined report with their non-insurance company affiliates in certain instances.
- 3) Roughly ten (10) states subject the insurance company to income tax in addition to premium tax. Generally, those states allow credits for the income taxes against the insurer's premium taxes. In these situations, the insurer is subject to corporate income taxation on the income of a pass-through entity in which it invests.
- 4) Most states, whether requiring separate company or combined reporting, have statutes, regulations or both that provide the Director or Commissioner of Taxation broad discretionary authority to make a range of adjustments to properly reflect tax when a company has arranged or conducts its business in a manner for which the primary purpose is tax evasion.
- 5) California law requires a reduction or disallowance of a deduction for dividends received from an overcapitalized insurance company.
- 6) Judicial doctrines such as sham transaction, economic substance or business purpose may be available to states to challenge tax evasion involving any misuse of insurance companies for state income tax purposes.